IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.206 OF 2005

Mr. Mahendra Mulji Asher ...Applicant

V/s

Praful Virchand Jhaveri and Anr. ...Respondents

Mr. Amit Sheth for the Applicant.
Mr. A.M. Shringarpure for the State.

CORAM: V.M.KANADE,J.
DATE : 6th April, 2005

P.C.:

1. Heard the learned Counsel appearing for the applicant.

2. Applicant is challenging the order of issuance of process by the Addl. Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai on a complaint being filed by respondent No.1 under section 138 of the Negotiable Instruments Act.

3. It is alleged that there was no existing debt or liability. It is further alleged that the complainant has suppressed material document dated 5/4/1996 in which the applicant had informed the respondent No.1 - complainant not to deposit the cheque. It is further submitted that the Supreme Court in the case of M/s.

Electronics Trade & Technology Development Corpn Ltd. Vs. M/s. Indian Technologists & Engineers (Electronics) Pvt. Ltd. and another reported in 1996 CRI L.J. 1692 (S.C.) has held that once the payment is stopped by issuing a letter to the drawee and if the cheque is presented then the provisions of section 138 of the Negotiable Instruments Act are not attracted. He further relied upon the judgment of the Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others reported in AIR 1994 SC 853.

4. It is not possible to accept the submissions made by the learned Counsel appearing for the applicant. So far as the question as to whether there was existing debt or liability is concerned, this issue can only be decided after the parties lead evidence in the trial court and thereafter finding can be given whether there is an existing debt or liability. So far as the judgment on which the reliance is placed in the case of (supra), the Supreme Court subsequently has overruled the said judgment and the ratio laid down in the said judgment is no longer good law. The ratio laid down in the Judgment in the case of S.P. Chengalvaraya Naidu (supra) on which is reliance is placed, will not be applicable to the facts of the

present case as the said judgment was pertaining to civil suits which were filed by the plaintiff.

5. The applicant, in any case, can lead evidence and bring the relevant documents viz. letter dated 5/4/1996 to the notice of the trial Court. Thus, there is no merit in the submissions made by the learned counsel for the applicant.

6. Criminal Application is dismissed.

7. It is clarified that all questions raised in this Criminal Application are kept open. The Trial Court shall decide all these questions after evidence is adduced by both the parties on merits and in accordance with law. If the application is made by the applicant for exemption, it may be considered favourably by the Magistrate. The plea of the accused may be recorded through his advocate and only when the presence of the accused is required, he may be asked to remain present.

8. Criminal Application is disposed of in the above terms.

V.M. KANADE, J.